

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3720 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PUSHPABEN WIFE OF BABUBHAI MANSUKHBHAI NAYKA

Versus

POLICE COMMISSIONER

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Appearance:

MR SUNIL C PATEL, Advocate for the Petitioner.

MR UR BHATT, learned Assistant Government Pleader for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/07/96

ORAL JUDGEMENT

Petitioner Pushpaben, who is the mother of detenu Raju alias Rajesh alias Kaliyo Babubhai Nayka, by way of this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the detention order dated 5-1-1996 passed against her son under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 by the Commissioner of

Police, Surat City.

The detaining authority, in the grounds of detention supplied to the detenu, after considering the two cases registered against him for offences punishable under sections 324, 452, 504 and 114 of the Indian Penal Code and the statements of three witnesses making allegations against the detenu about the anti-social and naferious activities being carried on by him, has recorded a finding that the detenu is a "dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention and, therefore, the impugned order of detention has been passed against the defenu which is under challenge in this petition.

Since this petition is required to be allowed on the first contention raised by Mr. S.C.Patel, learned Advocate for the petitioner, it is not necessary to refer to and deal with the other contentions raised by him. Mr. Patel submitted that the exercise of the power under section 9(2) of the said Act by the detaining authority claiming privilege of not disclosing the identity of the witnesses to the detenu is not genuine inasmuch as, according to Mr. Patel, material particulars, which are sufficient to disclose the identity of the witnesses have been disclosed by the detaining authority in the grounds of detention supplied to the detenu.

The submission made by Mr. Patel about the genuineness of the exercise of the power under section 9 (2) of the said Act, in my opinion, is well founded. In the copies of the statements of the witnesses supplied to the detenu, the detaining authority has kept blanks at the material places with a view to see that the identity of the witnesses is not disclosed to the detenu. However, in the grounds of detention supplied to the detenu, the detaining authority has given material particulars about the witnesses. The detaining authority has given the material particulars as regards the date, the time, the locality and the particular places where the incidents took place. The detaining authority has also stated with whom and for what purpose the detenu had gone to the place of the witness, or at which places the witnesses met him, and has stated the specific reasons for which the witnesses were beaten. In my opinion, all these details virtually disclose the identity of the witnesses to the detenu. On one hand the detaining authority has claimed privilege and invoked the

provisions of section 9 (2) withholding the identity of the witnesses and, on the other hand ,it has given material particulars apparently disclosing the identity of the witnesses. Thus, in my opinion, the power exercised by the detaining authority of claiming privilege under section 9 (2) of the said Act is not genuine. In other words, the said power has been exercised without application of mind and mechanically. By disclosing such material particulars indicating the total identity of the witnesses , the detenu was denied his right of making an effective representation against his detention guaranteed under Article 22 (5) of the Constitution of India and therefore, the continued detention of the detenu has become illegal and is vitiated.

In the result this petition is allowed. The order of detention dated 5-1-1996 is quashed and set aside. The detenu Raju alias Rajesh alias Kaliyo Babubhai Nayka is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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